

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ISHAN WAHI, NIKHIL WAHI, AND
SAMEER RAMANI,

Defendants.

Case No. 2:22-cv-01009-TL

PARADIGM OPERATIONS LP'S
SUPPLEMENTAL STATEMENT AND
CERTIFICATION

SUPPLEMENTAL STATEMENT & CERTIFICATION

Pursuant to the Court's March 17, 2023 Directive that Paradigm Operations LP ("**Paradigm**") file a supplemental statement certifying its submission is not duplicative of the *amici* briefs already filed in this case, Paradigm, by and through its attorneys of record, make the following submission:

Paradigm and the undersigned counsels have reviewed the Motion to Dismiss filed by the Defendants (the "**MTD**") as well as the various briefs filed by the other *amici* and proposed *amici* to date (together with the MTD, the "**Briefs**").

Paradigm certifies that its submission is not duplicative of any of the Briefs. Paradigm's submission is unique because it:

- 1 1) Analyzes a representative sample of the smart contract code underlying the digital assets in
2 question from a technical and legal perspective; and
- 3 2) Analyzes in detail the SEC's novel theory that a token, once sold in an investment contract
4 transaction, thereafter embodies that transaction and should itself be treated as a security
5 going forward (the "embodiment theory") and argues that the embodiment theory is
6 unsupported by current law.

7 None of the Briefs discuss how the smart contract code impacts the legal analysis of the tokens at
8 issue. The smart contract code analysis clarifies that, on their own, the tokens do not provide the holder
9 with any legally enforceable rights and is critical to the argument that the tokens themselves cannot be
10 investment contracts.

11 While the MTD and Digital Chamber of Commerce brief (the "**Digital Chamber Brief**") touch
12 on the embodiment theory in concept, the Paradigm submission analyzes it in detail and puts forward
13 different arguments as to why this theory is unsupported by applicable law.
14

15 The MTD argues that the tokens at issue do not have the essential ingredients of an investment
16 contract and that those tokens are not investment contracts because they do not satisfy the elements of the
17 *Howey* test. These arguments relate to the embodiment theory but do not address it head-on.

18 The Digital Chamber Brief argues that the regulatory environment governing digital assets is
19 uncertain and chaotic and that the SEC's regulation by enforcement is prejudicing market participants.
20 These arguments also relate to the embodiment theory but do not address it in detail.

21 The Paradigm submission is, therefore, distinguishable from both the MTD and the Digital
22 Chamber Brief because it analyzes the embodiment theory in detail and relies on specific Ninth Circuit
23 precedent in arguing that the SEC's embodiment theory is not supported by law. None of the other Briefs
24 directly addresses the application of this critical precedent to the embodiment theory.
25

1 All of the Briefs address different facets of the major questions doctrine. The Paradigm
2 submission does not address this issue.

3 Paradigm believes that reviewing an example of smart contract code and how it fits into the legal
4 analysis and analyzing the embodiment theory in detail under applicable precedent are important
5 considerations in deciding the pending Motion to Dismiss. No other Brief addresses these points in the
6 same manner as the Paradigm submission does.

7 Respectfully submitted this 20th day of March 2023.

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